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COMMITTEE ON ECONOMIC SOCIAL,
AND CULTURAL RIGHTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLES 16 AND 17 OF THE COVENANT

Concluding observations of the Committee on Economic,
Social and Cultural Rights

BELGIUM

1. The Committee considered the initial report of Belgium on articles 1 to 15 of the Covenant (E/1990/5/Add.15) at its 15th, 16th and 17th meetings on 11 and 13 May 1994 and adopted* the following concluding observations:

A. Introduction

2. The Committee thanks the State party for the comprehensive report submitted and for the detailed additional information, including extensive statistical data, provided both orally and in writing by the delegation in response to the Committee's questions and comments. The Committee regrets, however, that the report was submitted nearly 10 years late. In this regard, it takes note of the explanations provided by the Belgian Government according to which the delay was due to a number of concomitant factors connected, among other things, with the continuous process of reform of the State, which is reflected in changes in the responsibilities of its internal administrative authorities, with the density and complexity of the social welfare system created in Belgium, and with budgetary restraints which have a negative impact on the level of staffing of the country's public services. Nevertheless, the Committee wishes to emphasize that those explanations should not be considered by the Belgian Government as a justification. States parties must comply with

* At the 27th meeting (tenth session), held on 20 May 1994.

the reporting obligations they have freely assumed under the Covenant. The Committee hopes that the frank and excellent dialogue which has just begun between the Committee and the State party will continue in the future on a regular basis.

B. Factors and difficulties impeding the implementation of the Covenant

3. The Committee is concerned at the fact that Belgian authorities, referring to article 2, paragraph 1 of the Covenant, relating to progressive measures to be taken by States parties to implement the Covenant, are of the view that the provisions of the Covenant do not have direct effect and cannot be directly invoked by complainants before Belgian courts and tribunals. On the other hand the Committee notes that the International Covenant on Civil and Political Rights and other conventions, such as the European Social Charter, to which Belgium is a party, are directly applicable under Belgian law. The different status of the International Covenant on Economic, Social and Cultural Rights in domestic law appears to be confirmed by a decision of the Court of Cassation of 1990. The Committee does not share the view of the Belgian authorities and recalls that in its General Comment No. 3 of 1990 on the nature of States parties obligations under article 2 of the Covenant, it refers to a number of provisions in the Covenant, such as those of article 8 on the right to strike and those of article 13 on the right to education which seem to be capable of immediate application by judicial and other organs in many national legal systems. The Committee is of the view that any suggestions that the provisions indicated are inherently non-self-executing seem to be difficult to sustain.

C. Positive aspects

4. The Committee commends Belgium on the measures it has taken to give effect to the provisions of the Covenant and especially on the inclusion of economic, social and cultural rights in the new text of the Belgian Constitution of February 1994.

5. The Committee commends also the State party on its comprehensive health insurance system which could be considered as a model to follow by other countries. It notes with particular satisfaction that, since 1990, maternity insurance has constituted a specific branch of social security in Belgium and that maternity allowance no longer constitutes an obstacle to the hiring of women workers.

6. The Committee also notes with satisfaction the measures taken in Belgium to guarantee income for elderly persons and, in particular, to grant an allowance to elderly persons who have very limited means or a minimum pension.

7. In addition, the Committee welcomes the information that the legal provisions establishing criteria in the calculation of pensions, which appear to be discriminatory between men and women, are in the process of being reviewed in order to ensure equal treatment and to add an invalidity scheme.

8. The Committee also notes that with regard to strikes by public servants, in recent years disciplinary punishments had not been applicable and that the

Council of State in its ruling on the application of article 44 of the Royal Decree of 1991 stated that it implicitly guaranteed public servants' right to strike.

D. Principal subjects of concern

9. The Committee is concerned at the lack of legislative measures still existing in Belgium with regard to the establishment of clear and objective criteria to regulate the access of employers' and workers' organizations to the National Labour Council and to various commissions of the public and private sectors where collective conventions are elaborated. It recalls, in this connection, that the enactment of such legislative measures has been repeatedly recommended by the ILO Committee of Experts on Conventions and Recommendations.

10. In addition, the Committee notes with concern that the most vulnerable groups of society in Belgium are not always adequately protected. In this regard, it is particularly concerned at the reductions made in 1993 with regard to subsidies and certain social benefits, such as some categories of reimbursable medicines. The Committee regrets that this negative trend is developing in Belgium as well as in other European countries.

11. Moreover the Committee, while noting with satisfaction that the right to housing has been inscribed in the recently revised Constitution of Belgium, expresses concern at the adequacy of the measures taken to actually enforce that constitutional provision. In that respect the attention of the Government is drawn to Section E below.

E. Suggestions and recommendations

12. The Committee recommends that the right to strike be explicitly inscribed in Belgian law.

13. The Committee recommends that the legislative measures, which are under elaboration, to regulate the access of employers' and workers' organizations to the National Labour Council and other organs be speedily enacted.

14. The Committee recommends that Belgian authorities take appropriate measures to promote investment programmes and encourage, in particular, the construction of low-cost rental housing. In this connection, the Committee refers to its General Comment No. 4 of 1991 concerning the right to adequate housing and points out that in situations indicating a clear deterioration in the enjoyment of that right, urgent measures should be taken by the authorities concerned. The Committee, in view of the problems in the housing sector, which are still considerable, urges the Government to establish an official, nationwide Commission on Housing, comprised of representatives of Government, non-governmental organizations and other relevant groups. In view of the non-discrimination clauses contained in article 2 (2) of the Covenant, the Committee strongly urges the Government to fully ensure that persons belonging to ethnic minorities, refugees and asylum seekers are fully protected from any acts or laws which in any way result in discriminatory

treatment within the housing sector. In view of information received by the Committee that not all social housing units are occupied by lower income groups, the Committee urges the Government to undertake all necessary measures to ensure that lower-income groups have access to social housing which is affordable. The Committee urges the Government to more intensively apply existing laws allowing the Government to requisition properties and housing left unoccupied by owners.

15. Finally, the Committee requests the Government of Belgium to submit its second periodic report by 31 May 1997.